Remarks

Amendments to the specification correct simple clerical errors. They introduce no new matter.

The rejection of claims 1-24 under 35 U.S.C. § 102(a, e)

Claims 1-24 stand rejected as anticipated by Von Eichel-Streiber (US2003/0103987; issued as U.S. 6849715). This rejection is respectfully traversed.

The U.S. Patent and Trademark Office cites Von Eichel-Streiber for teaching that *Clostridium sordelii* can produce a toxin which is lethal to a tumor. The toxins were produced in a culture. The Office Action points to paragraph 72 and the abstract and page 1, col. 1, lines 1-20.

It is axiomatic that for a reference to anticipate, it must teach all elements of the claimed invention. Von Eichel-Streiber does not teach all elements of the claimed invention.

The claims employ two agents:

1. spores of a toxin-defective anaerobic bacterium.
2. a microtubule stabilizing anti-tumor agent.

Von Eichel-Streiber teaches neither. Von Eichel-Streiber is cited as teaching administering the toxin protein to tumors. Von Eichel-Streiber does not teach administration of spores. Von Eichel-Streiber does not teach anaerobic bacterium that are toxin-defective. Thus Von Eichel-Streiber does not teach spores of a toxin-defective anaerobic bacterium or their administration to a mammal with a tumor.

The second agent is a microtubule stabilizing agent. Examples of such agents are taught in the applicants' specification at page 8. Such agents include arsenic trioxide, discodermolide, epothilone B, and (+)-14-normethyldiscodermolide, of 10-deacetyltaxol; 7-epi-10-deacetyltaxol; 7-xylosyl-10-deacetyltaxol; 7-epi-taxol; cephalomannine; baccatin III; baccatin V; 10-deacetylbaccatin III; 7-epi-10-deacetylbaccatin III; 2-debenzoyl-2-(p-trifluromethylbenzoyl)taxol; 20-acetoxy-4-deacetyl-5-epi-20,O-secotaxol, taxane, taxotere, and

cephalomannine. See claims 8-12. Von Eichel-Streiber does not teach the use of such agents alone or in combination with spores.

Since Von Eichel-Streiber does not teach either of the agents specified in all of the pending claims, Von Eichel-Streiber does not and cannot anticipate the claims.

Withdrawal of the rejection is respectfully requested.

The rejection of claims 1-24 under 35 U.S.C. § 102 (a, e)

Claim 1-24 stand rejected as anticipated by Dang (US 7344710). This rejection is respectfully traversed.

It is axiomatic that for a reference to anticipate, it must teach all elements of the claimed invention. Dang does not teach all elements of the claimed invention.

The claims employ two agents:

1. spores of a toxin-defective anaerobic bacterium.
2. a microtubule stabilizing anti-tumor agent.

Dang is cited as teaching administration of spores of a toxin-defective bacterium and an anti-tumor agent. However, Dang does not teach the use of a microtubule stabilizing agent as required by all of the pending claims. Dang teaches the use of an agent which collapses tumor vasculature. See column 2, lines 1-2. Dang also teaches the use of DNA damaging agents, radiation, and anti-tumor antigen antibodies. See column 4, lines 37-41. None of these are the same as or suggest the use of microtubule stabilizing agents. In fact, Dang's teaching of use of agents which collapse tumor vasculature is diametrically opposite to the use of microtubule stabilizing agents. Thus, Dang neither teaches nor suggests that one should use a microtubule stabilizing anti-tumor agent in combination with toxin-defective anaerobic bacterial spores. For this reason Dang neither anticipates nor renders obvious the subject matter of claims 1-24.

Withdrawal of this rejection is respectfully requested.

Conclusion

A speedy allowance of all claims is requested, as the prior art neither taught nor suggested the combinations as claimed, either as a method of treating or as a kit for treating tumors.

Respectfully submitted,

By: ____/Sarah A. Kagan/ ___
Sarah A. Kagan
Registration No. 32,141

Date: 26 March 2010

Banner & Witcoff, Ltd.
Customer No. 22907